



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35731]

Ballard Terminal Railroad Company, L.L.C.—Acquisition and Operation Exemption—
Woodinville Subdivision

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption; request for comments.

SUMMARY: On April 2, 2013, Ballard Terminal Railroad Company, L.L.C. (Ballard), a Class III rail carrier, filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10902 to acquire the residual common carrier rights and obligations, including the right to reinstitute rail service, and the physical trackage assets on a line of railroad currently owned by the City of Kirkland (City) and the Port of Seattle (Port) in King County, Wash. (the Line), and currently subject to railbanking/interim trail use under the National Trails System Act, 16 U.S.C. 1247(d). Ballard also seeks the right to provide common carrier rail service over the Line, and requests that the Board order the transfer of all the rail materials to Ballard at their net liquidation value. Ballard states that it has no objection to shared use of the right-of-way as both a rail line and a trail. The Line consists of a portion of the former BNSF Railway Company (BNSF) Woodinville Subdivision extending between milepost 23.8 at

Woodinville, Wash., and milepost 12.6 at Bellevue, Wash.¹ The petition for exemption was filed concurrently with a Ballard petition to partially vacate the NITU issued in Docket No. AB 6 (Sub-No. 465X) for the Woodinville Subdivision (extending from milepost 23.8 to milepost 11.25). That NITU permitted railbanking/interim trail use negotiations under 16 U.S.C. 1247(d).² The Board seeks comments from interested persons on Ballard's request to resume rail service and partially vacate the NITU.

DATES: Written comments must be filed with the Board by June 18, 2013. Replies must be filed by July 18, 2013.³

¹ This segment was the subject of an abandonment proceeding and NITU in BNSF Railway Company—Abandonment Exemption—in King County, Wash., AB 6 (Sub-No. 465X).

² In a related matter, Ballard simultaneously filed a verified notice of exemption under 49 CFR 1150.41 to lease from Eastside Community Rail, LLC and to operate a 14.45-mile line of railroad between mileposts 23.8 and 38.25 that is adjacent to the Line at issue here. Ballard Terminal Railroad Company, L.L.C.—Lease Exemption—Line of Eastside Community Rail, LLC, FD 35730 (STB served Apr. 18, 2013).

³ On April 12, 2013, King County, the City, and Central Puget Sound Regional Transit Authority (collectively, Movants) jointly filed a motion to extend the time to respond to Ballard's petitions to partially vacate the NITU and for exemption, from April 22, 2013, to June 21, 2013. On April 17, 2013, Ballard filed a reply to the motion, objecting to the requested extension of time unless it is coupled with a condition that the City not remove the track and other rail assets on the 5.75-mile portion of the Line the City owns, until such time as the Board rules on Ballard's pending petitions. On April 18, 2013, Movants filed a motion for leave to file a reply to Ballard's reply. Regarding the motion to extend, pursuant to this notice and request for comments, the Board is initiating a proceeding and establishing a procedural schedule for comments. Movants' motion to extend the time to respond will therefore be denied as moot. The matter of the trackage removal is already pending in the U.S. District Court for the Western District of Washington on Ballard's motion for temporary restraining order, which is scheduled to be heard on May 3, 2013.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's website, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. FD 35731, 395 E Street, S.W., Washington, DC 20423-0001.

In addition, send one copy of any comments to: (1) Myles L. Tobin, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2832; (2) Craig Watson, Port of Seattle, Pier 69, P.O. Box 1209, Seattle, WA 98111; (3) Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Avenue, N.W., Washington, DC 20036; and (4) all other parties of record to this proceeding.

FOR FURTHER INFORMATION CONTACT: Marc Lerner at 202-245-0390.

Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: On April 2, 2013, Ballard filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10902 to acquire the residual common carrier rights and obligations, including the right to reinstitute rail service, and the physical trackage assets of the Line, for a segment of the former BNSF Woodinville Subdivision. This segment is currently subject to an interim trail use/railbanking agreement between BNSF and King County, a political subdivision of the State of Washington. The Port owns the real estate associated with the Line, which it

acquired from BNSF;⁴ the Port subsequently conveyed a portion of the Line to the City. In King County, Wash.—Acquisition Exemption—BNSF Railway Company, FD 35148 (STB served Sept. 18, 2009), the Board granted a request by King County for exemption from 49 U.S.C. 10901 to acquire BNSF's rights and obligations, including the right to reinstate rail service in the future.

Ballard's petition presents this issue: under what circumstances will the Board grant a carrier's request to vacate a NITU to permit reactivation of rail service when the petitioning carrier does not own or have any other interest in the right-of-way. An interim trail use arrangement is subject to being cut off at any time by the reinstitution of service. 16 U.S.C. 1247(d). Here, the abandoning railroad (BNSF) has transferred its rights and obligations, including the right to reinstate rail service, to King County (which is also the trail sponsor), and a different carrier, Ballard, seeks to reinstitute service.

Ballard submits letters from two shippers that support the reinstitution of rail service over the Line. CalPortland, a building materials and construction services provider, states that it desires to use the Line to receive hundreds of thousands of cubic yards per year of construction materials for upcoming road projects. Wolford Trucking & Demolition, Inc. (Wolford), a demolition and trucking services provider, states that it plans to use the Line to ship an estimated three million cubic yards of excavated materials, building demolition waste, and roadway grading spoils over the next several

⁴ The Port of Seattle—Acquisition Exemption—Certain Assets of BNSF Ry., FD 35128 (STB served June 20, 2008).

years. Ballard estimates that CalPortland and Wolford's use of the Line would translate to approximately 50,000 carloads of freight.⁵

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 17, 2014.

Decided: April 19, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig

Clearance Clerk

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⁵ Ballard submits three additional letters generally in support of an upgraded Eastside Rail Corridor: an open letter from the Snohomish County Executive Director supporting multiple purpose use of the Eastside Rail Corridor, including freight service; a letter to the Kirkland City Council from the Mayor of Woodinville requesting that the City delay the removal of the subject tracks until the Eastside Rail Corridor Regional Advisory Council presents its recommendations in Summer 2013; and a letter to Washington State Senator Rosemary McAuliffe from the Mayor of Snohomish reiterating a request for funding needed to upgrade the Eastside Rail Corridor.